In the United States District Court for the District of Utah, Central Division

LEONARD LOVETT, Plaintiff, vs. KEY ENERGY SERVICES, INC., Defendant.	MEMORANDUM DECISION AND ORDER ON DEFENDANTS MOTION TO TRANSFER VENUE Case No. 2:03cv1034 BSJ

This matter is before the court on defendant's Motion to Transfer Venue. The matter has been fully briefed and oral argument was heard on April 16, 2004. Now being fully advised and having duly considered the matter, the court issues this Memorandum Decision and Order.

BACKGROUND

This is an action that arises out of injuries sustained by plaintiff on July 14, 2003, as he was servicing an oil and gas well in Rangely, Colorado. Plaintiff lives in Vernal, Utah and was treated for his injuries there. Plaintiff filed his suit in the federal district court for the District of Utah on November 23, 2003. Defendant filed this Motion to Transfer Venue on January 12, 2004 and filed an answer on the following day. Defendant concedes that jurisdiction and venue are proper in the District of Utah but moves this court to transfer the case under 28 U.S.C. § 1404(a) to the District of Colorado claiming it is the more convenient forum.

ANALYSIS

The venue transfer statute provides: "For the convenience of parties and

witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). In discussing the circumstances in which a case should be transferred under 1404(a), the Tenth Circuit has noted that the following factors should be taken into consideration:

> the plaintiff's choice of forum; the accessibility of witnesses and other sources of proof, including the availability of compulsory process to insure attendance of witnesses; the cost of making the necessary proof; questions as to the enforceability of a judgment if one is obtained; relative advantages and obstacles to a fair trial; difficulties that may arise from congested dockets; the possibility of the existence of questions arising in the area of conflict of laws; the advantage of having a local court determine questions of local law; and, all other considerations of a practical nature that make a trial easy, expeditious and economical.

Crysler Credit Corp. v. Country Crysler, Inc., 928 F.2d 1509, 1516 (10th Cir. 1991) (citing Texas Gulf Sulpher Co. v. Ritter, 371 F.2d 145, 147 (10th Cir. 1967)).

The defendant contends in his written submission that Colorado law will apply to the merits of this case because the injury took place in Colorado and it thus has the more significant relationship to occurrence and parties. See Restatement (Second) of Conflicts of Laws § 145 (1971). However, at oral argument defendant conceded that this is not the proper time to decide a conflict of law question and that the real issue is the location of witnesses.

Defendant identifies four eye witnesses to the accident and argues that the District of Colorado is the only place where all four can be compelled to appear. The four eye witnesses are current or former employees of defendant Key Energy. Two present employees reside in Vernal, Utah, one present employee resides in Colorado and another former employee also resides in Colorado. Defendant claims that by virtue of their employment, all current employees can be compelled to appear in Colorado, but the former employee would not be subject to

subpoena in Utah. Defendant therefore argues that Colorado is the better place for the case to proceed because "[w]hen this boundary prevents one district court for hailing vital witnesses to testify at trial, a motion to transfer should be granted if that will cure the deficiency." Rozzetti v. Tucker, No 2:00cv395K, (2000 WL 33710840 (D. Utah 2000). Plaintiff responds that all of the damage witnesses reside in Utah and that none can be compelled to appear in Colorado, and that it is only one of the liability witnesses – the former employee who resides in Colorado – that cannot be compelled to appear.

While some courts have stated that liability witnesses are more important than damage witnesses in terms of balancing convenience,[1] there is no Tenth Circuit authority to that effect.

Plaintiff cites a decision by Judge Paul Cassell of this District in which Judge Cassell recently transferred a similar case to the District of Colorado. McCarley, et al. v. AEC Oil & Gas, Inc., et al., 2:03cv687 (decided November 20, 2003) (document #21). In that case, all the liability witnesses resided in Colorado as well as some of the damage witnesses. Only two damage witnesses resided in Utah, and Judge Cassell found "Colorado is clearly a more convenient forum than Utah." In this case, however, the majority of witnesses do not reside in Colorado, but rather the other way around. In this case, only two witnesses reside in Colorado, while all others reside in the District of Utah.

If the case is transferred to Colorado the plaintiff with not be able to compel his

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[1] See Kahhan v. City of Ft. Lauderdale, 566 F.Supp. 736, 739 (E.D.Pa. 1983) (holding the convenience of liability witnesses is more important than that of damages witnesses).

physicians and other damage witnesses to appear. If, on the other hand, the case remains in Utah defendant will not be able to compel only one of his four liability witnesses. The current employee can be made to appear because of his employment status with defendant. Granting transfer of venue would merely shift inconvenience from the defendant to the plaintiff. "Where a transfer of an action would simply shift the inconvenience from one party to another, the transfer should be denied." See Hirsch v. Zavaras, 920 F.Supp. 148, 151 (D. Colo. 1996) (internal citation omitted). Also, plaintiff's choice of venue should not be disturbed absent a showing of substantially greater convenience in a forum elsewhere as balanced against the forum of plaintiff's choice. Scheidt v. Klein, 956 F.2d 963, 965 (10th Cir. 1992) (Unless "the balance is strongly in favor of the movant the plaintiff's choice of forum should rarely be disturbed." (citing Willaim A. Smith Contracting Co. v. Travelers Idem. Co., 467 F.2d 662, 664 (10th Cir. 1972))).

Considering all the circumstances and the convenience of all witnesses, this court rules that on balance transfer of the case to the District of Colorado would not be sufficiently more convenient to warrant transfer away from the District of Utah. Based on the foregoing, defendant's motion for transfer of venue is hereby

DENIED.

IT IS SO ORDERED.

DATED this 6th day of May, 2004.

J. THOMAS GREENE
UNITED STATES DISTRICT JUDGE

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United States District Court
for the
District of Utah
May 10, 2004

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-01034

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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